Michigan Register

Issue No. 2– 2008 (Published February 15, 2008)

GRAPHIC IMAGES IN THE

MICHIGAN REGISTER

COVER DRAWING

Michigan State Capitol:

This image, with flags flying to indicate that both chambers of the legislature are in session, may have originated as an etching based on a drawing or a photograph. The artist is unknown. The drawing predates the placement of the statue of Austin T. Blair on the capitol grounds in 1898.

(Michigan State Archives)

PAGE GRAPHICS

Capitol Dome:

The architectural rendering of the Michigan State Capitol's dome is the work of Elijah E. Myers, the building's renowned architect. Myers inked the rendering on linen in late 1871 or early 1872. Myers' fine draftsmanship, the hallmark of his work, is clearly evident.

Because of their size, few architectural renderings of the 19th century have survived. Michigan is fortunate that many of Myers' designs for the Capitol were found in the building's attic in the 1950's. As part of the state's 1987 sesquicentennial celebration, they were conserved and deposited in the Michigan State Archives.

(Michigan State Archives)

East Elevation of the Michigan State Capitol:

When Myers' drawings were discovered in the 1950's, this view of the Capitol – the one most familiar to Michigan citizens – was missing. During the building's recent restoration (1989-1992), this drawing was commissioned to recreate the architect's original rendering of the east (front) elevation.

(Michigan Capitol Committee)

Michigan Register

Published pursuant to § 24.208 of
The Michigan Compiled Laws

Issue No. 2— 2008
(This issue, published February 15, 2008, contains
documents filed from January 15, 2008 to February 1, 2008)

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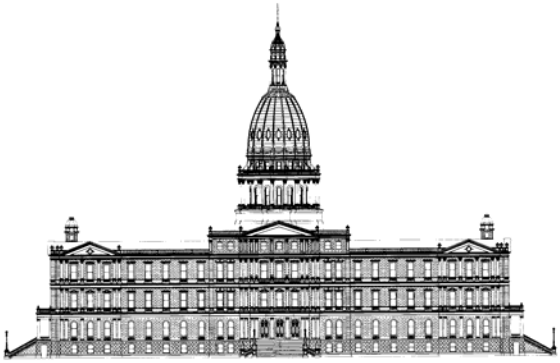
Peter Plummer, Executive Director, State Office of Administrative Hearings and Rules; **Deidre O'Berry**, Administrative Rules Analyst for Operations and Publications.

Jennifer M. Granholm, Governor



John D. Cherry Jr., Lieutenant Governor

PREFACE

PUBLICATION AND CONTENTS OF THE MICHIGAN REGISTER

The State Office of Administrative Hearings and Rules publishes the *Michigan Register*.

While several statutory provisions address the publication and contents of the *Michigan Register*, two are of particular importance.

MCL 24.208 states:

Sec. 8 (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

(a) Executive orders and executive reorganization orders.

(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.

(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.

(d) Proposed administrative rules.

(e) Notices of public hearings on proposed administrative rules.

(f) Administrative rules filed with the secretary of state.

(g) Emergency rules filed with the secretary of state.

(h) Notice of proposed and adopted agency guidelines.

(i) Other official information considered necessary or appropriate by the State Office of Administrative Hearings and Rules.

(j) Attorney general opinions.

(k) All of the items listed in section 7(1) after final approval by the certificate of need commission or the statewide health coordinating council under section 22215 or 22217 of the public health code, 1978 PA 368, MCL 333.22215 and 333.22217.

(2) The State Office of Administrative Hearings and Rules shall publish a cumulative index for the Michigan register.

(3) The Michigan register shall be available for public subscription at a fee reasonably calculated to cover publication and distribution costs.

(4) If publication of an agency's proposed rule or guideline or an item described in subsection (1)(k) would be unreasonably expensive or lengthy, the State Office of Administrative Hearings and Rules may publish a brief synopsis of the proposed rule or guideline or item described in subsection (1)(k), including information on how to obtain a complete copy of the proposed rule or guideline or item described in subsection (1)(k) from the agency at no cost.

(5) An agency shall transmit a copy of the proposed rules and notice of public hearing to the State Office of Administrative Hearings and Rules for publication in the Michigan register.

MCL 4.1203 states:

Sec. 203. (1) The Michigan register fund is created in the state treasury and shall be administered by the State Office of Administrative Hearings and Rules. The fund shall be expended only as provided in this section.

(2) The money received from the sale of the Michigan register, along with those amounts paid by state agencies pursuant to section 57 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.257, shall be deposited with the state treasurer and credited to the Michigan register fund.

(3) The Michigan register fund shall be used to pay the costs preparing, printing, and distributing the Michigan register.

(4) The department of management and budget shall sell copies of Michigan register at a price determined by the State Office of Administrative Hearings and Rules not to exceed cost of preparation, printing, and distribution.

(5) Notwithstanding section 204, beginning January 1, 2001, the State Office of Administrative Hearings and Rules shall make the text of the Michigan register available to the public on the internet.

(6) The information described in subsection (5) that is maintained by the State Office of Administrative Hearings and Rules shall be made available in the shortest feasible time after the information is available. The information described in subsection (5) that is not maintained by the State Office of Administrative Hearings and Rules shall be made available in the shortest feasible time after it is made available to the State Office of Administrative Hearings and Rules.

(7) Subsection (5) does not alter or relinquish any copyright or other proprietary interest or entitlement of this state relating to any of the information made available under subsection (5).

(8) The State Office of Administrative Hearings and Rules shall not charge a fee for providing the Michigan register on the internet as provided in subsection (5).

(9) As used in this section, "Michigan register" means that term as defined in section 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.205.

CITATION TO THE MICHIGAN REGISTER

The *Michigan Register* is cited by year and issue number. For example, 2001 MR 1 refers to the year of issue (2001) and the issue number (1).

CLOSING DATES AND PUBLICATION SCHEDULE

The deadlines for submitting documents to the State Office of Administrative Hearings and Rules for publication in the *Michigan Register* are the first and fifteenth days of each calendar month, unless the submission day falls on a Saturday, Sunday, or legal holiday, in which event the deadline is extended to include the next day which is not a Saturday, Sunday, or legal holiday. Documents filed or received after 5:00 p.m. on the closing date of a filing period will appear in the succeeding issue of the *Michigan Register*.

The State Office of Administrative Hearings and Rules is not responsible for the editing and proofreading of documents submitted for publication.

Documents submitted for publication should be delivered or mailed in an electronic format to the following address: MICHIGAN REGISTER, State Office of Administrative Hearings and Rules, Ottawa Building - Second Floor, 611 W. Ottawa, P.O. Box 30695, Lansing, MI 48933.

RELATIONSHIP TO THE MICHIGAN ADMINISTRATIVE CODE

The *Michigan Administrative Code* (1979 edition), which contains all permanent administrative rules in effect as of December 1979, was, during the period 1980-83, updated each calendar quarter with the publication of a paperback supplement. An annual supplement contained those permanent rules, which had appeared in the 4 quarterly supplements covering that year.

Quarterly supplements to the Code were discontinued in January 1984, and replaced by the monthly publication of permanent rules and emergency rules in the *Michigan Register*. Annual supplements have included the full text of those permanent rules that appear in the twelve monthly issues of the *Register* during a given calendar year. Emergency rules published in an issue of the *Register* are noted in the annual supplement to the Code.

SUBSCRIPTIONS AND DISTRIBUTION

The *Michigan Register*, a publication of the State of Michigan, is available for public subscription at a cost of $400.00 per year. Submit subscription requests to: State Office of Administrative Hearings and Rules, Ottawa Building - Second Floor, 611 W. Ottawa, P.O. Box 30695, Lansing, MI 48933. Checks Payable: State of Michigan. Any questions should be directed to the State Office of Administrative Hearings and Rules (517) 335-2484.

INTERNET ACCESS

The *Michigan Register* can be viewed free of charge on the Internet web site of the State Office of Administrative Hearings and Rules: www.michigan.gov/cis/0,1607,7-154-10576_35738---,00.html

Issue 2000-3 and all subsequent editions of the *Michigan Register* can be viewed on the State Office of Administrative Hearings and Rules Internet web site. The electronic version of the *Register* can be navigated using the blue highlighted links found in the Contents section. Clicking on a highlighted title will take the reader to related text, clicking on a highlighted header above the text will return the reader to the Contents section.

Peter Plummer, Executive Director
State Office of Administrative Hearings and Rules

2005 PUBLICATION SCHEDULE

Issue No.	Closing Date for Filing or Submission Of Documents (5 p.m.)	Publication Date
1	January 15, 2008	February 1, 2008
2	February 1, 2008	February 15, 2008
3	February 15, 2008	March 1, 2008
4	March 1, 2008	March 15, 2008
5	March 15, 2008	April 1, 2008
6	April 1, 2008	April 15, 2008
7	April 15, 2008	May 1, 2008
8	May 1, 2008	May 15, 2008
9	May 15, 2008	June 1, 2008
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22	December 1, 2008	December 15, 2008
23	December 15, 2008	January 1, 2009
24	January 1, 2009	January 15, 2009

CONTENTS

ADMINISTRATIVE RULES
FILED WITH THE SECRETARY OF STATE

MCL 24.208 states in part:

"Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(f) Administrative rules filed with the secretary of state."

ADMINISTRATIVE RULES

SOAHR 2005-036

DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY DIVISION

AIR POLLUTION CONTROL

Filed with the Secretary of State on January 31, 2008

This rule becomes effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, 45a(6), or 48 of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of environmental quality by sections 5503 and 5512 of 1994 PA 451, MCL 324.5503 and 324.5512, and Executive Reorganization Order No. 1995-18, MCL 324.99903)

R 336.1401, R 336.1402, and R 336.1404 of the Michigan Administrative Code are amended, and R 336.1401a, R 336.1405, R 336.1406, R 336.1407, and R 336.1420 are added to the Code as follows:

PART 4. EMISSION LIMITATIONS AND PROHIBITIONS – SULFUR-BEARING COMPOUNDS

R 336.1401 Emission of sulfur dioxide from power plants.
Rule 401. (1) In a power plant, it is unlawful for a person to burn fuel that does not comply with the sulfur content limitation of table 41 or which, when burned, results in sulfur dioxide emissions exceeding an equivalent emission rate as shown in table 41. In a power plant located in Wayne county, it is unlawful for a person to burn fuel that does not comply with the sulfur content limitation of table 42 and unlawful to cause or permit a discharge into the atmosphere from fuel-burning equipment sulfur dioxide in excess of the sulfur dioxide concentration limit shown in table 42.
(2) Tables 41 and 42 read as follows:

TABLE 41
Fuel and sulfur dioxide emission limitations for fuel burning equipment

Plant Capacity[a]	Maximum average sulfur content in fuel[b] Percent by weight	Equivalent emission rates			
		Parts per million by volume (ppmv) corrected to 50% excess air		Pounds of sulfur dioxide per million Btu of heat input	
		Solid fuel[c] (12,000 Btu/lb)	Liquid fuel[d] (18,000 Btu/lb)	Solid fuel[c] (12,000 Btu/lb)	Liquid fuel[d] (18,000 Btu/lb)
0-500,000 lbs steam per hour plant capacity	1.5	890	630	2.5	1.67

Greater than 500,000 lbs steam per hour plant capacity	1.0	590	420	1.67	1.11
(a) The total steam production capacity of all coal- and oil-burning equipment in a power plant as of August 17, 1971.					
(b) "Maximum average sulfur content in fuel" means the average sulfur content in all fuels burned at any 1 time in a power plant. The sulfur content shall be calculated on the basis of 12,000 Btu per pound for solid fuels and 18,000 Btu per pound for liquid fuels. The determination of sulfur content (percent by weight) of fuel shall be carried out in accordance with a procedure acceptable to the department.					
(c) Solid fuels include both pulverized coal and all other coal.					
(d) Liquid fuels include distillate oil (No. 1 and No. 2), heavy oil (No. 4, No. 5, and No. 6), and crude oil.					

TABLE 42
Fuel and sulfur dioxide concentration limitations for fuel burning equipment located in Wayne county

Fuel type	Maximum weight percent sulfur content in fuel[(a)] limitations for fuel-burning equipment	SO_2 ppmv emission rates corrected to 50% excess air[(b)]
Pulverized coal	1.00	550
Other coal	0.75	420
Distillate oil Nos. 1 & 2	0.30	120
Waste and used oil	1.0	300[(c)]
Crude and heavy oil Nos. 4, 5, & 6	1.00	400
(a) The determination of sulfur content (percent by weight) of fuel shall be carried out in accordance with a procedure acceptable to the department. (b) Recordkeeping necessary to demonstrate compliance with the requirements of this rule and compliance testing must be conducted with a frequency and in a manner acceptable to the department. (c) A certain degree of control would be required to meet this limit if 1.0% sulfur fuel is used in lieu of 0.75% sulfur fuel which must be documented and demonstrated in a manner acceptable to the department.		

(3) The use of fuels having sulfur contents as set forth in table 41 and table 42 shall not allow degradation in the mass rate of particulate emissions, unless otherwise authorized by the department. The department may require source emission tests which may be performed by, or under the supervision of, the department at the expense of the owners and may require the submission of reports to the department both before and after changes are made in the sulfur content in fuel.
(4) The following provisions apply to persons in Wayne county:
(a) The maximum weight percent sulfur content in fuel limitations for fuel-burning equipment provisions of table 42 of this rule shall not apply to any person who uses a combination of fuels in such ratios as to meet the sulfur dioxide concentration limitations specified in table 42 and has obtained

written approval from the department for this exemption. The allowable concentration limit will be based on the value in the table for the fuel having the higher allowable concentration limit.
(b) The maximum weight percent sulfur content in fuel limitations for fuel-burning equipment provisions of table 42 of this rule shall not apply to any person who has received an installation permit from the department on a control device to desulfurize the stack gases and the control device is installed and operating properly.

R 336.1401a Definitions.
Rule 401a. As used in this part:
(a) "Power plant" means a single structure devoted to steam or electric generation, or both, and may contain multiple boilers.
(b) "Sulfur recovery plant" means any plant that recovers elemental sulfur from any gas stream.

R 336.1402 Emission of sulfur dioxide from fuel-burning sources other than power plants.
Rule 402. (1) At a fuel burning source other than a power plant it is unlawful for a person to cause or allow the emission of sulfur dioxide from the combustion of any coal or oil fuel in excess of 1.7 pounds per million Btu of heat input for oil fuel or in excess of 2.4 pounds per million Btu of heat input for coal fuel.
(2) The provisions of subrule (1) of this rule do not apply to a fuel-burning source that is unable to comply with the specified emission limits because of sulfur dioxide emissions caused by the presence of sulfur in other raw materials charged to the fuel-burning source. This exception shall apply if at any time the actual sulfur dioxide emission rate exceeds the expected theoretical sulfur dioxide emission rate from fuel burning. The expected theoretical sulfur dioxide emission rate shall be based on the quantity of fuel burned and the average sulfur content of the fuel.
(3) At a fuel burning source located in Wayne county other than a power plant, it is unlawful for a person to burn fuel that does not comply with the sulfur content limitation of table 43 and unlawful to cause or allow a discharge into the atmosphere from a fuel burning source of sulfur dioxide in excess of the sulfur dioxide concentration limit shown in table 43.
(4) Table 43 reads as follows:

Table 43

Fuel and sulfur dioxide concentration limitations for fuel burning sources located in Wayne county at a source other than power plants

Fuel type	Maximum weight percent sulfur content in fuel[(a)] limitations for fuel-burning equipment	SO_2 ppmv emission rates corrected to 50% excess air[(b)]
Coal	0.75	420
Distillate oil Nos. 1 & 2	0.30	120
Waste and used oil	1.0	300[(c)]
Crude and heavy oil Nos. 4, 5, & 6	1.00	400

(a) The determination of sulfur content (percent by weight) of fuel shall be carried out in accordance with a procedure acceptable to the department.
(b) Recordkeeping necessary to demonstrate compliance with the requirements of this rule and compliance testing must be conducted with a frequency and in a manner acceptable to the department.
(c) A certain degree of control would be required to meet this limit if 1.0% sulfur fuel is used in lieu of 0.75% sulfur fuel which must be documented and demonstrated in a manner acceptable to the

department.

(5) The use of fuels having sulfur contents as set forth in table 43 shall not allow degradation in the mass rate of particulate emissions, unless otherwise authorized by the department. The department may require source emission tests which may be performed by, or under the supervision of, the department at the expense of the owners and may require the submission of reports to the department both before and after changes are made in the sulfur content in fuel.
(6) The following provisions apply to persons in Wayne county:
(a) The maximum weight percent sulfur content in fuel limitations for fuel-burning equipment provisions of table 43 of this rule shall not apply to a person who uses a combination of fuels in such ratios as to meet the sulfur dioxide concentration limitations specified in table 43 and has obtained written approval from the department for this exemption. The allowable concentration limit will be based on the value in the table for the fuel having the higher allowable concentration limit.
(b) The maximum weight percent sulfur content in fuel limitations for fuel-burning equipment provisions of table 43 of this rule shall not apply to a person who has received an installation permit from the department for a control device to desulfurize the stack gases and the control device is installed and operating properly.

R 336.1404 Emission of sulfur dioxide and sulfuric acid mist from sulfuric acid plants.
Rule 404. (1) It is unlawful for a person to cause or allow the emission of sulfuric acid mist from any sulfuric acid plant in excess of 0.50 pounds per ton of acid produced, the production being expressed as 100% sulfuric acid.
(2) It is unlawful for a person in Wayne county to cause or allow sulfur dioxide emissions into the atmosphere from any sulfuric acid plant to exceed 6.5 pounds per ton of acid produced.
(3) Compliance with this rule shall be demonstrated using a procedure acceptable to the department.

R 336.1405 Emissions from sulfur recovery plants located within Wayne county.
Rule 405. At sulfur recovery plants located in Wayne county, a person shall not cause or allow the emission into the atmosphere of sulfur dioxide, sulfur trioxide, or sulfuric acid from any such sulfur recovery plant to exceed 0.01 pounds per pound of sulfur produced.

R 336.1406 Hydrogen sulfide emissions from facilities located within Wayne county.
Rule 406. (1) A person in Wayne county shall not cause or allow the combustion of any refinery process gas stream that contains hydrogen sulfide in a concentration of greater than 100 grains per 100 cubic feet of gas without removal of the hydrogen sulfide in excess of this concentration.
(2) When the odor of hydrogen sulfide is found to exist beyond the property line of a source, a person in Wayne county shall not cause or allow the concentration of hydrogen sulfide to exceed 0.005 parts per million by volume for a maximum period of 2 minutes.

R 336.1407. Sulfur compound emissions from sources located within Wayne county and not previously specified.
Rule 407. Both of the following apply to process and fuel burning sources located within Wayne county to which the provisions of R 336.1401 to R 336.1406 do not apply.
(a) A person shall not cause or allow the emission into the atmosphere gases with a concentration of sulfur dioxide greater than 300 parts per million by volume, which shall be corrected to 50% excess air.

(b) A person shall not cause or allow the emission into the atmosphere gases with a concentration of sulfuric acid or sulfur trioxide or a combination thereof greater than 15 milligrams per cubic meter, which shall be corrected to 50% excess air.

R 336.1420. Applicability determinations, definitions, and permitting requirements under CAIR sulfur dioxide trading program.

Rule 420. (1) As used in this rule, "CAIR" means clean air interstate rule.

(2) The provisions of 40 C.F.R. §97.202, §97.220 to §97.224 and the appropriate opt-in provisions of 40 C.F.R. §97.280 to §97.288 (2006) are adopted by reference in this rule and are applicable to these rules. Copies of 40 C.F.R. §97.202, §97.220 to §97.224, and §97.280 to §97.288 are available for inspection and purchase at the Department of Environmental Quality, Air Quality Division, 525 West Allegan Street, P.O. Box 30260, Lansing, Michigan 48909-7760, at a cost as of the time of adoption of this rule of $70.00. Copies may also be obtained from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, at a cost as of the time of adoption of this rule of $60.00; or on the United States government printing office internet web site at www.access.gpo.gov.

(3) Each CAIR sulfur dioxide source, as defined in 40 C.F.R. §97.202 is required to apply for a CAIR permit in accordance with 40 C.F.R. §97.220 to §97.224. This permit shall be administered in accordance with the procedural requirements of R 336.1214 and shall be incorporated into the facility's renewable operating permit as an attachment.

ADMINISTRATIVE RULES

SOAHR 2007-036

DEPARTMENT OF NATURAL RESOURCES

LAW ENFORCEMENT DIVISION

LOCAL SNOWMOBILE/OFF ROAD VEHICLE CONTROL

Filed with the Secretary of State on January 31, 2008

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred upon the director of the department of natural resources by 1994 PA 451, MCL 324.82125 and 324.81132)

R 257.1603 of the Michigan Administrative Code is amended as follows:

R 257.1603 Kawkawlin River; snowmobile and off road vehicle speed restriction.

Rule 3. On the frozen surfaces of the Kawkawlin River, sections 5 and 6, T14N, R5E; and sections 32 and 33, T15N, R5E; Bangor Township, Bay County, a person shall not operate a snowmobile or an off road vehicle at a speed greater than 45 miles per hour.

EXECUTIVE ORDERS
AND
EXECUTIVE REORGANIZATION ORDERS

MCL 24.208 states in part:

"Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

(a) Executive orders and executive reorganization orders."

EXECUTIVE ORDERS

EXECUTIVE ORDER No. 2008-1
INTERAGENCY TASK FORCE ON EMPLOYEE MISCLASSIFICATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, employers in Michigan and elsewhere too often misclassify individuals they hire as independent contractors, even when those individuals should legally be classified as employees;

WHEREAS, when an employee is misclassified as an independent contractor, the employer potentially violates a number of legal obligations under state and federal labor, employment, and tax laws;

WHEREAS, employee misclassification significantly harms Michigan workers who are deprived of their important legal rights and protections;

WHEREAS, employee misclassification is unfair to the overwhelming majority of Michigan job providers who play by the rules because law-abiding businesses are placed at a competitive disadvantage compared to those who avoid their legal obligations;

WHEREAS, employee misclassification significantly harms Michigan taxpayers because employers that misclassify employees illegally avoid financial obligations to the State of Michigan;

WHEREAS, the various Michigan laws relating to employee misclassification have historically been enforced by separate state departments and agencies;

WHEREAS, a number of enforcement agencies within the Department of Labor and Economic Growth have already begun to coordinate their employee misclassification enforcement activities, but a task force to share information and coordinate enforcement across different state departments would greatly enhance the state's law enforcement efforts;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS
As used in this Order:

A. "Department of Labor and Economic Growth" means the principal department of state government created as the Department of Commerce under Section 225 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.325, renamed the Department of Consumer and Industry Services under Executive Order 1996-2, MCL 445.2001, and renamed the Department of Labor and Economic Growth under Executive Order No. 2003-18, MCL 445.2011.

B. "Department of Management and Budget" means the principal department of state government created under Section 121 of The Management and Budget Act, 1984 PA 431, MCL 18.1121.

C. "Department of Treasury" means the principal department of state government created under Section 75 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.175.

D. "Task Force" means the Interagency Task Force on Employee Misclassification created under this Order.

II. CREATION OF THE INTERAGENCY TASK FORCE ON EMPLOYEE MISCLASSIFICATION

A. The Task Force on Employee Misclassification is created as an advisory body within the Department of Labor and Economic Growth.

B. The Task Force shall include the Director of the Department of Labor and Economic Growth or his or her designee and the following members appointed by the Governor:

1. An individual representing the Wage and Hour Division of the Department of Labor and Economic Growth.

2. An individual representing the Workers' Compensation Agency of the Department of Labor and Economic Growth.

3. An individual representing the Unemployment Insurance Agency of the Department of Labor and Economic Growth.

4. An individual representing the Discovery and Tax Enforcement Division of the Department of Treasury.

5. An individual representing the Business Services Administration of the Department of Management and Budget.

C. Of the members of the Task Force appointed under Section II.B., one member shall be appointed for a term expiring on December 31, 2008, one member shall be appointed for a term expiring on December 31, 2009, one member shall be appointed for a term expiring on December 31, 2010, and two members shall be appointed for terms expiring on December 31, 2011. After the initial appointments, members shall be appointed to serve terms of four years.

D.A vacancy on the Task Force shall be filled in the same manner as the original appointment.

E. The Director of the Department of Labor and Economic Growth or his or her designee shall serve as Chairperson of the Task Force.

III. CHARGE TO THE TASK FORCE

A. The Task Force shall do all of the following:

1. Examine and evaluate existing employee misclassification enforcement mechanisms in Michigan and other jurisdictions, and make recommendations for more effective enforcement mechanisms. In particular, the Task Force should examine and evaluate the existing employee misclassification enforcement mechanisms arising under the Minimum Wage Law of 1964, 1964 PA 154, MCL 408.381 to 408.398; 1978 PA 390, MCL 408.471 to 408.490; the Michigan Employment Security Act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75; the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.101 to 418.941; 1965 PA 166, MCL 408.551 to 408.558; and the Income Tax Act of 1967, 1967 PA 281, MCL 206.1 to 206.532.

2. Create a system for sharing information relating to suspected employee misclassification violations among Task Force member agencies, to the extent possible under existing Michigan law.

3. Establish a protocol through which individual Task Force member agencies investigating employee misclassification matters under their own statutory or administrative authority will refer a matter to other Task Force member agencies for assessment of potential liability under other relevant authority.

4. Explore information sharing possibilities with investigators in other jurisdictions.

5. Identify barriers to information sharing under current state law and recommend to the Governor proposed executive or legislative actions needed to overcome the barriers.

6. Facilitate the pooling, focusing, and targeting of investigative resources, to the extent possible under current Michigan law.

7. Develop strategies for systematically investigating employee misclassification within those industries in which misclassification is most common.

8. Identify significant cases of employee misclassification that should be jointly investigated and, to the extent possible under existing Michigan law, form joint enforcement teams to utilize the collective investigative and enforcement capabilities of Task Force member agencies.

9. Work cooperatively with local, state, and federal law enforcement agencies, including sharing information with the Internal Revenue Service and establishing a systematic procedure for referring cases to the Attorney General or local or federal prosecutors.

10. Work cooperatively with state, federal, and local social services agencies to provide assistance to workers that have been exploited by employee misclassification.

11. Work cooperatively with business, labor, and community groups interested in reducing employee misclassification, including but not limited to both of the following:

a. Seeking ways to prevent employee misclassification, such as through the dissemination of educational materials regarding the legal differences between independent contractors and employees.

b. Enhancing mechanisms for identifying and reporting instances of employee misclassification.

12. Consult with representatives of business, organized labor, and other entities, including the Michigan Economic Development Corporation, about the employee misclassification enforcement activities of the Task Force and its member agencies, and ways of improving operations.

13. Increase public awareness of the illegal nature of and harms inflicted by employee misclassification.

14. Establish procedures for soliciting referrals or information from the public, including through a telephone hotline.

B. The Task Force shall issue a report to the Governor on July 1 of each year, which shall detail the accomplishments of the Task Force, identify any administrative or legal barriers that might be impeding the more effective operation of the Task Force, and make recommendations for executive or legislative measures to improve employee misclassification enforcement.

IV. OPERATIONS OF THE TASK FORCE

A. The Task Force shall be staffed and assisted by personnel from the Department of Labor and Economic Growth as directed by the Governor, subject to available resources and funding.

B. The Task Force shall adopt procedures consistent with Michigan law and this Order governing its organization and operations.

C. The Department of Labor and Economic Growth shall assist the Task Force with recordkeeping responsibilities.

D. A majority of the members serving on the Task Force constitutes a quorum for the transaction of the Task Force's business. The Task Force shall act by a majority vote of its serving members.

E. The Task Force shall meet at the call of the Chairperson.

F. The Task Force may, as appropriate, make inquiries, studies, investigations, hold hearings, and receive comments from the public. The Task Force may also consult with outside experts in order to perform its duties, including, but not limited to, experts in the private sector, organized labor, government agencies, and at institutions of higher education.

G. The Task Force may hire or retain contractors, sub-contractors, advisors, consultants, and agents, and may make and enter into contracts necessary or incidental to the exercise of the powers of the Task Force and the performance of its duties as the Director of the Department of Labor and Economic Growth deems advisable and necessary, in accordance with this Order, and the relevant statutes, rules, and procedures of the Civil Service Commission and the Department of Management and Budget.

H. Members of the Task Force shall refer all legal, legislative, and media contacts to the Department of Labor and Economic Growth.

V. MISCELLANEOUS

A. All departments, committees, commissioners, or officers of this state shall give to the Task Force, or to any member or representative of the Task Force, any assistance required in the performance of the duties of the Task Force so far as is compatible with its, his, or her duties.

B. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking effect of this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order.

This Order is effective upon filing.

Given under my hand and the Great Seal of the State of Michigan this 1st day of February in the year of our Lord, two thousand and eight.

JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:
SECRETARY OF STATE

EXECUTIVE ORDERS

EXECUTIVE ORDER No. 2008-2

EXECUTIVE REORGANIZATION

DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, the Office of Financial and Insurance Services was established by Executive Order 2000-4, MCL 445.2003;

WHEREAS, the Commissioner of Financial and Insurance Services regulates the provision of automobile and home insurance in Michigan under The Insurance Code of 1956, 1956 PA 218, MCL 500.100 to 500.8302;

WHEREAS, Chapter 31 of The Insurance Code of 1956, 1956 PA 218, MCL 500.3101 to MCL 500.3179, requires the owner or registrant of a motor vehicle required to be registered in this state to maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance;

WHEREAS, The Insurance Code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, also provides Michigan insurance consumers with important legal rights and protections;

WHEREAS, it is imperative that Michigan automobile and home insurance consumers have access to an effective regulatory system that strengthens insurance oversight, prevents abuse, and maintains representation of consumers' interests;

WHEREAS, ensuring that Michigan residents have access to affordable, reliable, and fair insurance no matter where they live is critical to growing our cities and growing Michigan's economy;

WHEREAS, the creation of an independent advocate within state government dedicated solely to representing and protecting the interests of automobile and home insurance consumers would greatly benefit Michigan residents;

WHEREAS, the creation of an independent advocate within state government dedicated solely to representing and protecting the interests of automobile and home insurance consumers would enhance efficiency and effectiveness within state government by consolidating and focusing consumer advocacy responsibilities in a single position while enabling the Commissioner of the Office of Financial and Insurance Regulation to focus activities on regulatory responsibilities;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Automobile and Home Insurance Consumer Advocate" or "Advocate" means the position created under Section III of this Order.

B. "Automobile insurance" means that term as defined under Section 2102 of the Insurance Code of 1956, 1956 PA 218, MCL 500.2102.

C. "Civil Service Commission" means the commission required under Section 5 of Article XI of the Michigan Constitution of 1963.

D. "Commissioner of Financial and Insurance Regulation" or "Commissioner" means the head of the Office of Financial and Insurance Regulation, formerly known as the Commissioner of Financial and Insurance Services and renamed the Commissioner of Financial and Insurance Regulation under Section II.C. of this Order.

E. "Department of Labor and Economic Growth" or "Department" means the principal department of state government created as the Department of Commerce under Section 225 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.325, renamed the Department of Consumer and Industry Services under Executive Order 1996-2, MCL 445.2001, and renamed the Department of Labor and Economic Growth under Executive Order 2003-18, MCL 445.2011.

F. "Department of Management and Budget" means the principal department of state government created under Section 121 of The Management and Budget Act, 1984 PA 431, MCL 18.1121.

G. "Home insurance" means that term as defined under Section 2103 of the Insurance Code of 1956, 1956 PA 218, MCL 500.2103.

H. "Office of Financial and Insurance Regulation" means the office established by Executive Order 2000-4, MCL 445.2003, as the Office of Financial and Insurance Services, and renamed the Office of Financial and Insurance Regulation under Section II.A. of this Order.

I. "State Budget Director" means the individual appointed by the Governor pursuant to Section 321 of The Management and Budget Act, 1984 PA 431, MCL 18.1321.

II. RENAMING THE OFFICE OF FINANCIAL AND INSURANCE SERVICES

A. The Office of Financial and Insurance Services is renamed the Office of Financial and Insurance Regulation.

B. Any and all statutory or other references to the Office of Financial and Insurance Services not inconsistent with this Order shall be deemed references to the Office of Financial and Insurance Regulation.

C. The Commissioner of Financial and Insurance Services is renamed the Commissioner of Financial and Insurance Regulation.

D. Any and all statutory or other references to the Commissioner of Financial and Insurance Services not inconsistent with this Order shall be deemed references to the Commissioner of Financial and Insurance Regulation.

E. The Office of Financial and Insurance Regulation shall exercise its prescribed statutory powers, duties and functions of rule-making, licensing and registration including the prescription of rules, rates, regulations and standards, and adjudication independently of the Director of the Department of Labor and Economic Growth. All budgeting, procurement, and related management functions of the Office of Financial and Insurance Regulation shall be performed under the direction and supervision of the Director of the Department of Labor and Economic Growth.

III. CREATION OF THE POSITION OF AUTOMOBILE AND HOME INSURANCE CONSUMER ADVOCATE

A. The position of Automobile and Home Insurance Consumer Advocate is created within the Office of Financial and Insurance Regulation. The Advocate shall exercise his or her prescribed powers, duties, responsibilities, and functions independently of the Commissioner. The Advocate shall be a member of the classified state civil service. The appointing authority for the Advocate shall be the Governor.

B. All of the authority, powers, duties, or functions of the Office necessary for the Advocate to perform the powers, duties, and functions vested in the Advocate under this Order are transferred to the Advocate. Nothing in this paragraph shall be interpreted to diminish the ability of the Commissioner to independently exercise the powers, duties, responsibilities, and functions vested in the Commissioner prior to the effective date of this Order.

IV.POWERS AND DUTIES OF THE AUTOMOBILE AND HOME INSURANCE CONSUMER ADVOCATE

A. The Advocate shall do all of the following:

1. Advocate for affordable, reliable, and fair automobile insurance and home insurance.

2. Conduct hearings and receive testimony from consumers; examine and investigate laws, regulations, and practices; receive expert advice; and survey best practices from around the country to assess the impact of automobile insurance and home insurance rates, rules, and forms on consumers in Michigan.

3. Submit to the Governor an annual report on the Advocate's findings and recommendations for administrative, legislative, or other corrective actions that would positively affect the interests of automobile insurance and home insurance consumers.

4. Refer instances of potential criminal conduct of which the Advocate becomes aware in the course of his or her duties to the Commissioner, the Attorney General, or other appropriate law enforcement agencies. This paragraph shall not be interpreted to alter the duty of the Commissioner to report suspected criminal activity to the Attorney General under Section 228 of The Insurance Code of 1956, 1956 PA 218, MCL 500.228.

5. Perform other related duties as requested by the Governor, consistent with applicable law.

B. The Advocate may do all of the following:

1. Appear, intervene, and be heard before the Commissioner as a party or otherwise on behalf of insurance consumers in any matters affecting automobile insurance and home insurance.

2. Subject to available funding, utilize an internet website, a toll-free telephone number, or other mechanisms for receiving consumer input.

3. Educate consumers on how to protect themselves against predatory or illegal insurance practices.

4. Coordinate advocacy and educational efforts with non-governmental consumer advocacy entities and other organizations.

5.All other things necessary or convenient to achieve the objectives and purposes of this Order, consistent with applicable law.

C. The budgeting, procurement, and related management functions of the Advocate shall be performed under the direction and supervision of the Director of the Department of Labor and Economic Growth.

D. Subject to available funding, the Advocate may hire or retain such experts, contractors, subcontractors, advisors, consultants, and agents as he or she may deem advisable and necessary, in accordance with relevant law and the procedures, rules, and regulations of the Civil Service Commission and the Department of Management and Budget, and may make and enter into contracts necessary or incidental to the exercise of powers and performance of his or her duties.

E. All departments, committees, commissioners, or officers of this state shall give to the Advocate any necessary assistance required by the Advocate in the performance of the Advocate's duties so far as is compatible with his or her duties, subject to applicable law. Free access shall also be given to any books, records, or documents in its, his, or her custody, relating to matters within the scope of authority, powers, duties, or functions of the Advocate, subject to applicable law.

F. The Advocate may accept donations of labor, services, or other things of value from a public or private agency or person to the extent these donations are used to perform his or her official duties. No insurance corporation or insurer or any officer, director, or agent thereof shall directly or indirectly, pay by way of gift, credit, loan, or any other pretense whatsoever, any sum of money or other valuable thing to the Advocate; and the Advocate shall not accept any such payment.

V. IMPLEMENTATION

A. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective April 6, 2008 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 1st day of February, in the year of our Lord, two thousand eight.

JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

Secretary of State

OPINIONS OF THE ATTORNEY GENERAL

MCL 14.32 states in part:

"It shall be the duty of the attorney general, when required, to give his opinion upon all questions of law submitted to him by the legislature, or by either branch thereof, or by the governor, auditor general, treasurer or any other state officer"

MCL 24.208 states in part:

"Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(j) Attorney general opinions. "

OPINIONS OF THE ATTORNEY GENERAL

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

PLATS: The scope of permissible "public uses" of platted roads ending at the shore of a lake

DEDICATIONS:

CONST 1963, ART 3, § 7:

REAL PROPERTY:

While the Legislature has the authority to modify the law, any legislative modification of the judicially established rules of property law that have shaped the rights and expectations of property owners regarding the meaning of "public use" in the context of platted roads ending at the shore of a lake has the potential to impact existing property rights and would be subject to the constitutional protections against the taking of property without due process and just compensation.

Opinion No. 7211 January 30, 2008

Honorable John Stakoe
State Representative
The Capitol
Lansing, MI 48909

You have asked whether the Legislature has the power "to revisit" determinations made by the Michigan Court of Appeals in court cases concerning the scope of permissible "public uses" of roads that end at the shore of a lake in platted subdivisions. The specific cases underlying your question are *Jacobs v Lyon Twp* (*Jacobs I*), 181 Mich App 386, 391; 448 NW2d 861 (1989), *Jacobs v Lyon Twp* (After Rem) (*Jacobs II*), 199 Mich App 667; 502 NW2d 382 (1993), and *Higgins Lake Property Owners Ass'n v Gerrish Twp*, 255 Mich App 83; 662 NW2d 387 (2003), all of which involved evidentiary and legal determinations regarding the scope of permissible uses at particular road ends on Higgins Lake.

Before addressing your question, some background information about plats and the law regarding the dedication of land in plats for public use is helpful.

In the two *Jacobs* cases and the *Higgins Lake Property Owners Ass'n* case, the property at issue fronted on Higgins Lake and had been subdivided and platted, or mapped, by the proprietors of the property in accordance with state statutes that allowed the creation of such plats. "Proprietor" is the term used to describe the owner of the lands that are subdivided by a plat. See, e.g., the Land Division Act, 1967 PA 288, MCL 560.101 *et seq*, at section 102(*o*), MCL 560.102(*o*). In addition to creating lots, the proprietors of the plats involved in these cases designated roads on the plats to provide access to the lots and to the shore of Higgins Lake. The roads ran approximately perpendicular to the shore of Higgins Lake and ended there. *Jacobs I*, 181 Mich at 387; *Higgins Lake Property Owners Ass'n*, 255 Mich App at 88.

As part of the platting process, the proprietors set forth words of dedication on the plats, thereby defining who could use certain common areas on the plats, such as roads, alleys, and parks, and how those lands could be used. As to the plats involved in the *Jacobs I* and *Higgins Lake Property Owners Ass'n* cases, the words of dedication simply indicated that the roads in the plats were for "public use." *Jacobs I*, 181 Mich at 389; *Higgins Lake Property Owners Ass'n*, 255 Mich App at 89.

A dedication of land in a plat "for public use" not only describes who may use the land and how it may be used but also serves as an offer of a gift of that land for public use. *Wayne County v Miller*, 31 Mich 447, 448-449 (1875). Under the laws that governed the creation of plats at the time the plats in the *Jacobs I* and *Higgins Lake Property Owners Ass'n* cases were recorded, lands dedicated by plats were deemed to be held in trust by the local unit of government having jurisdiction over that land. The Plat Act, 1839 PA 91, as amended by 1887 PA 309, stated:

> The maps so made and recorded in compliance with the provisions of this act shall be deemed a sufficient conveyance to vest the fee of such parcels of land as may be

> therein designated for public uses in the city or village within the incorporate limits of which the land platted is included, or if not included within the limits of any incorporated city or village, then in the township within the limits of which it is included in trust to and for the uses and purposes therein designated, and for no other use or purposes whatever.

This former provision of the then Plat Act is similar to that found currently in section 253(1) and (2) of the Land Division Act, MCL 560.253(1)(2), which states:

> (1) When a plat is certified, signed, acknowledged and recorded as prescribed in this act, every dedication, gift or grant to the public or any person, society or corporation marked or noted as such on the plat shall be deemed sufficient conveyance to vest the fee simple of all parcels of land so marked and noted, and shall be considered a general warranty against the donors, their heirs and assigns to the donees for their use for the purposes therein expressed and no other.
>
> (2) The land intended for the streets, alleys, commons, parks or other public uses as designated on the plat shall be held by the municipality in which the plat is situated in trust to and for such uses and purposes.[1]

Under the statute by which the plats had been created and case law dealing with dedication, it has become well established that where land has been given for a public use, the permissible uses to which that property may be put are governed by the intent of the person who dedicated that land. In the case of a plat, the intent of the dedicator is determined from the language used in the dedication and the surrounding circumstances. *Jacobs II*, 199 Mich App at 672. The intent of any donor is inherently fact-specific and must be determined on a case-by-case basis according to the available evidence. Where the plat simply states that the roads are for public use and are shown on the plat to end at a body of water, the courts have consistently applied the principles reiterated in the *Jacobs* cases regarding the scope of permissible uses of those roads.

[1] The same or similar language first appeared in the territorial acts of March 12, 1821, and April 12, 1827, and continued in 1839 PA 91, the Plat Act of 1929, 1929 PA 172, and the Subdivision Control Act of 1967, 1967 PA 288, which is now called the Land Division Act. See *Kirchen v Remenga*, 291 Mich 94, 111; 288 NW 344 (1939), and *West Michigan Park Ass'n v Dep't of Conservation*, 2 Mich App 254, 262; 139 NW2d 758 (1966).

In addition to dedications to the public through the recording of a plat, there may also be "dedications" of land for the exclusive private use of persons designated in the dedication. See *Martin v Beldean*, 469 Mich 541, 546-548; 677 NW2d 312 (2004).

Regardless of whether the land has been dedicated for public use or for private use by the recording of the plat, private rights arise in the lot owners who purchase their land in reliance on the words of the plat. As noted in *Pulcifer v Bishop*, 246 Mich 579, 582-583; 225 NW 3 (1929):

> But it is also the rule in this and other States that the platting and sale of lots constitute a dedication of streets, etc., delineated on the plat, as between the grantors and the purchasers from them.
>
> It is said in Dillon on Municipal Corporations (5th Ed.), § 1090:
>
> "In this connection it must be kept in view that the platting and sale create certain rights in the grantees of the original owner, which, as between the grantor and the grantee, are irrevocable in their nature.
>
> * * *
>
> "But other decisions recognize a *clearly defined distinction* between the rights acquired by the *public* through dedication effected by platting and sale, and the *private rights* acquired by the grantees by virtue of the grant or covenant contained in a deed which refers to a plat, or bounds the property upon a street through the grantor's lands. These decisions adopt the view that where lands are platted and sales are made with reference to the plat, the acts of the owner in themselves merely create private rights in the grantees entitling the grantees to the use of the streets and ways laid down on the plat or referred to in the conveyance. But these rights are purely in the nature of private rights founded upon a grant or covenant, and no public rights attach to such streets or lands until there has been an express or implied acceptance of the dedication, evidenced either by general public user, or by the acts of the public authorities. In this view, the making of the plat and the sale of lands with reference thereto are merely evidence of an intent to dedicate, which like every other common law dedication, to be made complete and carried into effect so as to create public rights, must be accepted and acted upon by the public." Citing *Grandville v. Jenison*, 84 Mich. 54. [Emphasis in original.]

Thus, private rights arise in dedicated or reserved areas of the plat upon the sale of lots within the plat. It is well established that a purchaser of property in a recorded plat receives not only the interest as described in a deed to the property but also whatever rights are described in the plat. *Nelson*

v Roscommon County Rd Comm, 117 Mich App 125, 132; 323 NW2d 621 (1982). The Court in *Nelson* further explained that lot owners in plats have inherent rights to use the streets laid down in the plat and that those rights are in the nature of easements. The corollary to this principle is that owners within a plat have rights in limiting the use of such areas to their dedicated purposes such as occurred in both *Jacobs* cases and the *Higgins Lake Property Owners Ass'n* case. See also *West Michigan Park Ass'n*, n 1 *supra*, and cases cited therein.

Jacobs II is regarded as the leading case concerning rights in dedicated streets ending at water, summarized by the Court as follows:

> Publicly dedicated streets that terminate at the edge of navigable waters are generally deemed to provide public access to the water. *Thies v Howland*, 424 Mich 282, 295; 380 NW2d 463 (1985);[2] *McCardel v Smolen*, 404 Mich 89, 96; 273 NW2d 3(1978); *Backus v Detroit*, 49 Mich 110; 13 NW 380 (1882). The members of the public who are entitled to access to navigable waters have a right to use the surface of the water in a reasonable manner for such activities as boating, fishing, and swimming. An incident of the public's right of navigation is the right to anchor boats temporarily. *Thies, supra* at 288. The right of a municipality to build a wharf or dock at the end of a street terminating at the edge of navigable waters is based upon the presumption that the platter intended to give access to the water and permit the building of structures to aid in that access.[3] *Thies, supra* at 296. The extent to which the right of public access includes the right to erect a dock or boat hoists or the right to sunbathe and lounge at the road end depends on the scope of the dedication. *McCardel, supra* at 97; *Thom v Rasmussen*, 136 Mich App 608, 612; 358 NW2d 569 (1984). The intent of the dedicator is to be determined from the language used in the dedication and the surrounding circumstances. *Thies, supra* at 293; *Bang v Forman*, 244 Mich 571, 576; 222 NW 96 (1928). [*Jacobs II*, 199 Mich App at 671-672.]

[2] In *Thies*, the Court ruled that public ways that terminate at the edge of a navigable body of water are treated differently from those that run parallel to the shore. *Thies*, 424, *supra* at 295.

[3] However, it is not to be inferred that the municipality has the right to appropriate the road ends to any use inconsistent with the dedication. *Backus, supra* at 120.

The *Jacobs II* Court held that, where platted streets are dedicated "for the use of the public," a nonexclusive public dock could be erected at the road end, but individuals could not erect boat hoists there or sunbathe or lounge. 199 Mich App at 670, 673.

In the *Jacobs I* case, the Court of Appeals had held that the construction of a public boat dock at the shore of a dedicated, platted road was within the scope of the dedicated public use and that the use of surface waters adjoining the road end for swimming, wading, fishing, and boating and to temporarily anchor boats were also within the scope of the dedicated public use. *Jacobs I*, 181 Mich App at 391. But the Court also held that the "construction of boat hoists, seasonal boat storage and the use of road-ends for lounging and picnicking *exceed the scope and intent of the dedication* of property for use as streets." *Id.* (Emphasis added.) *Jacobs II* continued these holdings in the subsequent decision on appeal after remand.

Returning to your question regarding whether the Legislature may modify a rule of property law that has been developed regarding the dedication of platted road ends upon which persons have relied when acquiring interests in platted lands, it appears that you are asking whether the Legislature may retrospectively broaden the parameters of what constitutes permissible "public use" when these words have been used in a plat dedication. This issue was addressed in *Jacobs I*. Lyon Township enacted an ordinance that the Court described as follows:

> In 1987, apparently in response to the ongoing shoreline conflict, defendant township enacted Ordinance 31 which purports to govern public water and land-related activity at lake road-ends. In short, the ordinance provides for the erection of no more than one nonexclusive private dock at each road-end which must be maintained for public use, prohibits overnight mooring, prohibits permanent mooring posts, permits the erection of boat hoists, prohibits parking on the roadway, and prohibits the dry storage of boats, boat hoists, docks, et cetera on the land at the road-end. The ordinance provides that, except as otherwise prohibited, the general public may use the road-ends for "lounging, picnicking, swimming, fishing and boating, provided such activities do not

> create a safety hazard, cause unreasonable congestion, interfere with the intended use, or otherwise disturb the peace." [181 Mich App at 388-389.]

The lot owners in the plat under review in *Jacobs I* sued the township, claiming that the uses and activities permitted by the ordinance exceeded those contemplated by the dedication of the streets for public use. The Court agreed that certain uses and activities were beyond the scope of the dedication and ruled that the provisions of the ordinance allowing such activities "must be stricken":

> In this case, we believe that the construction of boat hoists, seasonal boat storage and the use of road-ends for lounging and picnicking exceed the scope and intent of the dedication of property for use as streets. Those activities are not necessary to either the use and maintenance of the streets, or to provide public access to the water. As our Supreme Court noted in *McCardel* [*v Smolen,* 404 Mich 89; 273 NW2d 3 (1978)]:
>
> > Lounging and picnicking on this wide boulevard, activities which need not involve use of the water, are not riparian or littoral rights. We agree with the Court of Appeals that "[t]hose activities are in no way directly related to a true riparian use of the waters of Higgins Lake; even assuming that the defendants choose to lounge and picnic on the boulevard because of the lake's proximity. In that context, the only 'use' of the water is the enjoyment of its scenic presence." . . .
> >
> > The question whether the public has the right to enter and leave the water from the boulevard, like the question whether they may lounge and picnic on the boulevard, depends, rather, on the scope of the dedication. [404 Mich 97.]
>
> Plaintiffs also claim that the public beach and party activities on the road-ends created a nuisance and plaintiffs seek abatement of those activities. We need not review the trial court's ruling on plaintiffs' nuisance claim in light of our decision that the *portions of the ordinance permitting those activities beyond the scope of the dedication in this case must be stricken.* [181 Mich App at 391-392; emphasis added.]

In reaching its decision, the Court of Appeals noted the court decisions holding that road ends at lakes are presumed to be intended as a means of access to a lake, and that municipalities could erect docks at the road ends to facilitate public access to a lake or river. *Jacobs*, 181 Mich App at 390. But

the Court went on to note that a municipality has no right to appropriate road ends to any use inconsistent with the dedication, citing *Backus v Detroit*, 49 Mich 110, 115; 13 NW 380 (1882).[1]

The decision in *Jacobs I* is also consistent with *Baldwin Manor, Inc v City of Birmingham*, 341 Mich 423, 428; 67 NW2d 812 (1954), where the Michigan Supreme Court held that the City of Birmingham was precluded from building a road through a park which, if built, would "make impossible, or at least impracticable, the use of parcels No 1 and No 2 for park purposes." The Court relied on the legal encyclopedia Corpus Juris Secundum (CJS) to summarize the law concerning government's ability to alter a dedication:

> Likewise, in 26 CJS, Dedication, § 65, pp 154, 155, it is said:
> "Except as appears below,[1] if a dedication is made for a specific or defined purpose, *neither the legislature*, a municipality or its successor, nor the general public *has any power to use the property for any other purpose than the one designated*, whether such use be public or private, and whether the dedication is a common-law or a statutory dedication; and this rule is not affected by the fact that the changed use may be advantageous to the public. This can only be done under the right of eminent domain. On the other hand, the municipality cannot impose a more limited and restricted use than the dedication warrants." [341 Mich at 430-431; emphasis added.]

Similarly, statutory changes to property rights created by established rules of property law may not be applied retroactively if that would result in an adverse impact on those rights. In *Gorte v Transportation Dep't*, 202 Mich App 161, 167; 507 NW2d 797 (1993), the Court of Appeals held that a statute precluding a claim of adverse possession against the State did not apply to the plaintiff where application of the statute would result in abrogating or impairing the plaintiff's vested right. The Court of Appeals found that, because plaintiff's right had vested before the effective date of the statute, the plaintiff could successfully assert his claim of adverse possession against the State.

[1] A municipality has no proprietary interest in the dedicated areas. See *Village of Kalkaska v Shell Oil Co*, 433 Mich 348; 446 NW2d 91 (1989), and cases cited therein.

The Court's rulings in *Jacobs I* and *II* and *Higgins Lake* were based on over 100 years of common law precedent, and any alteration of the property interests identified in those decisions must, therefore, be considered in that context. The rights and expectations of property owners are legitimately grounded in long-standing recognition of those rights and expectations. See, e.g., *Bott v Natural Resources Comm*, 415 Mich 45; 327 NW2d 838 (1982). As discussed above, Michigan law prohibits marina-like operations, such as permanent boat mooring or hoists, and sunbathing and lounging, at road ends dedicated "for public use" unless such activities are authorized by the dedication. Thus, a statutory change allowing these activities at road ends in already existing plats could have an adverse impact upon the rights of the property owners within the plat, particularly those whose properties are situated next to these road ends.

Const 1963, art 3, § 7 provides that the "common law and the statute laws now in force . . . shall remain in force until they expire by their own limitations, or are changed, amended or repealed." Thus, the Legislature has the ability to modify the law. *Rusinek v Schultz, Snyder, & Steele Lumber Co*, 411 Mich 502, 506-508; 309 NW2d 163 (1981). However, the Legislature is subject to constitutional limitations. Both the United States and Michigan Constitutions prohibit the taking of private property without just compensation and due process of law. US Const, Am V; Const 1963, art 10, § 2.

The Fifth Amendment of the United States Constitution provides, in pertinent part: "nor shall private property be taken for public use, without just compensation." This prohibition is applied to the states through the Due Process Clause of the Fourteenth Amendment. *Chicago, B & Q R Co v Chicago*, 166 US 226, 234; 17 S Ct 581; 41 L Ed 979 (1897). Similarly, the Michigan Constitution provides:

> Private property shall not be taken for public use without just compensation therefore being first made or secured in a manner prescribed by law. If private property

[1] It is not necessary to address the exceptions noted in 26 CJS § 65 to answer your question.

> consisting of an individual's principal residence is taken for public use, the amount of compensation made and determined for that taking shall be not less than 125% of that property's fair market value, in addition to any other reimbursement allowed by law. Compensation shall be determined in proceedings in a court of record. [Const 1963, art 10, § 2.]

Of course, whether any of these constitutional limitations would be implicated by a particular legislative action seeking to alter the meaning of "public use" is fact-dependent and cannot be answered in the abstract. Generally, however, when property dedicated for a particular purpose is appropriated for an entirely different purpose, this may afford grounds for a court action to enjoin the inconsistent use or secure compensation for the interference with valuable property rights. See *Ford v Detroit*, 273 Mich 449, 452; 263 NW 425 (1935). See also *Austin v VanHorn*, 245 Mich 344, 347; 222 NW 721 (1929); *Sanborn v McClean*, 233 Mich 227; 206 NW 496 (1925); and *Allen v Detroit*, 167 Mich 464, 469-470; 133 NW 317 (1911).

It is my opinion, therefore, that, while the Legislature has the authority to modify the law, any legislative modification of the judicially established rules of property law that have shaped the rights and expectations of property owners regarding the meaning of "public use" in the context of platted roads ending at the shore of a lake has the potential to impact existing property rights and would be subject to the constitutional protections against the taking of property without due process and just compensation.

MIKE COX
Attorney General

ENROLLED SENATE AND HOUSE BILLS SIGNED INTO LAW OR VETOED (2008 SESSION)

Mich. Const. Art. IV, §33 provides: "Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law . . . If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves . . . he shall return it within such 14-day period with his objections, to the house in which it originated."

Mich. Const. Art. IV, §27, further provides: "No act shall take effect until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give immediate effect to acts by a two-thirds vote of the members elected to and serving in each house."

MCL 24.208 states in part:

"Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.

(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year."

ENROLLED SENATE AND HOUSE BILLS SIGNED INTO LAW OR VETOED (2008 SESSION)

Public Act No.	Enrolled House Bill	Enrolled Senate Bill	I.E. * Yes / No	Governor Approved Date	Filed Date	Effective Date	Subject
1		730	Yes	1/11	1/11	1/11/08	Education; other; references to "handicapped person" in school code; revise to "student with a disability", allow for transfer of public school academy assets and pupils to another public school, and revise effective date for school district consolidations. **(Sen. J. Gleason)**
2		545	Yes	1/16	1/16	1/16/08	Environmental protection; water pollution; storm water permits; provide waiver of fees for certain municipalities. **(Sen. M. Jansen)**

* - I.E. means Legislature voted to give the Act immediate effect.
** - Act takes effect on the 91st day after *sine die* adjournment of the Legislature.
*** - See Act for applicable effective date.
+ - Line item veto
# - Tie bar

MICHIGAN ADMINISTRATIVE CODE TABLE
(2008 SESSION)

MCL 24.208 states in part:

"Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(i) Other official information considered necessary or appropriate by the State Office of Administrative Hearings and Rules."

The following table cites administrative rules promulgated during the year 2000, and indicates the effect of these rules on the Michigan Administrative Code (1979 ed.).

MICHIGAN ADMINISTRATIVE CODE TABLE
(2008 RULE FILINGS)

R Number	Action	2008 MR Issue
257.1603	*	2
336.1401	*	2
336.1401a	A	2
336.1402	*	2
336.1404	*	2
336.1405	A	2
336.1406	A	2
336.1407	A	2
336.1420	A	2

(***** Amendment to Rule, **A** Added Rule, **N** New Rule, **R** Rescinded Rule)

CUMULATIVE INDEX

* Proposed Rules